

From Providing ‘Alternative Punishment’ to Offering ‘Punishment in the Community’: The History and Development of Community Penalties in Britain

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ABSTRACT

The idea of dealing with offenders in the community rather than sending them to prison has a long history. We have moved far away from the pre-eighteenth century era where punishment meant punishing the body to the eighteenth and nineteenth century where offenders were segregated from their communities often putting them into prisons, which is still one of the dominant forms of punishment in the present days. From late nineteenth century until now, we can observe a move towards punishing and controlling offenders in the community. Basically, the community penalties started its journey as providing ‘alternative to custody’ measures aimed at the welfare and therapy of offenders outside the prison walls. This rationale provided base for the sentencing practices for quite a long time. However, during 1970s, this rational came under attack from some research evidences suggesting that rehabilitation programmes are ineffective in reducing offending. This paper highlights a brief history of the main community penalties in Britain. It specifically focuses on the reason for a change in approaches of community penalties from providing ‘alternative to punishment’ to offering ‘punishment in the community’.

Key Words: Community Punishment, Rehabilitation, Prison Overcrowding, Penal Policy, Criminal Justice Act, 1991

INTRODUCTION

At no other time in British penal history has the use of imprisonment been under such sustained criticism as it was in the period between 1965 and 1985 (Willis, 1986). That period was marked by a deepening series of crises in the prisons, involving rising numbers and falling levels of legitimacy and control (Brownlee, 1998). Despite all the attempts at reducing the use of imprisonment that began to emerge from the mid-1960s onwards, the prison population in England and Wales in 1985 stood at a record high level, and the proportionate use of immediate custody had increased slowly but steadily over

the previous ten years reversing trends in earlier decades and outstripping imprisonment rates in many other European countries (Brake and Hale, 1992). As a result, overcrowding in prisons increased, conditions for prisoners and for staff continued to deteriorate and serious riots and other lesser forms of disorder and indiscipline spasmodically rocked the system (Brownlee, 1998).

In response to this, the following decades saw a number of apparently disparate political and academic developments which nevertheless worked together to suggest the strengthening of community punishment and an optimism about reducing the prison population and improving prison conditions.

Although, by the sophisticated standards of contemporary penal history, there is as yet no adequate account of community penalties, and certainly no real way of knowing what they actually accomplished in the past (Mair, 1997), this paper aims to evaluate community penalties in England and Wales hoping to show that they are not 'alternatives to custody', but rather they should be seen as 'punishment in the community' measures.

EXPLAINING COMMUNITY PENALTIES

At the start of discussion, it is important to know what is meant by community penalties in England and Wales. Community penalties according to Nellis (2001: 17) refer to 'sentences other than fines for dealing with convicted offenders outside prison'. Similarly, for Bottoms, Geithorpe and Rex (2001), community penalties are punishments of the court which are 'structurally located between custody on the one hand, and financial or nominal penalties (fines, compensation, discharge), on the other'. Community penalties are also known as non custodial sentences, community based alternatives, intermediate treatment etc. (Nellis, 2001).

Of all the community penalties, probation is no doubt the first community sentence or alternative to prison sentence. In England and Wales, the early history of probation can be traced back to the work of police court missionaries of the Church of England and Temperance Society (Worrall, 1997) whereas in USA, most literature on probation refers to John Augustus of Boston who initiated volunteer work of bailing offenders under his supervision (See Bochel, 1976 for details). In both cases, the approach of dealing with offenders was based on the philosophy of 'advise, assist, and befriend' offenders (Worrall, 1997: 66). Later on, the volunteer work of missionaries was given statutory status by the introduction of Probation of Offenders Act 1907. Nellis (2001) stated that the early journey of probation started as alternative to prison sentence. The main task of the probation officers was to develop good working relationship with offenders with the hope of securing their rehabilitation and reintegration. In this respect, the probation officers job included supervising offenders, ensuring compliancy with condition of probation order, visitation and reporting to the court about offender's behavior (King, 1964).

Probation grew with time not only in respect of its organization but also its scope from dealing with mere drunkenness to other crimes as well (King, 1964). Probation being an alternative to custody measure with the task of reducing prison population grew concerns with respect to its effectiveness especially with the increasing rates of prison population in 1960s and 1970s. Therefore, new community measures like Parole and Suspended Sentence were introduced in the Criminal Justice Act 1967 and Community Service Order (CSO) under Criminal Justice Act 1972 (Davies, Croall and Tyrer, 2005). There were several factors responsible for the introduction of not only new community sentences, but also a change in their philosophy on the basis of which they were originally introduced and implemented.

BACKGROUND OF COMMUNITY PENALTIES

Historically, the concept of 'community penalties' has been very problematic. Community penalties can include many diverse activities in the criminal justice system: not just sentencing options following conviction, but also pre-trial decisions and even broader policies of preventing risk groups, such as juveniles, from experiencing formal justice and control (Vass, 1996). But in order to avoid confusion and to limit the discussion around specific findings, community penalties will be treated here as those penalties which are administered following conviction for a criminal offence; and whose availability within a legal framework and use by courts designates them as community penalties whose main purpose is to punish offenders in the community and thus, explicitly or implicitly, keep them out of prison. In this sense, this limited definition of community penalties comes close to the 'community sentences' provided under the Criminal Justice Act 1991, as amended by the Criminal Justice Act 1993 and the national standards of practice for probation services and social services departments in England and Wales (Home Office et al., 1992, 1995).

In fact, a short essay like this inevitably precludes a comprehensive history and developments of community penalties, but it will try, in what follows, to offer a broad view of the introduction of the main community penalties (probation, suspended sentence, and community service) into the criminal justice system to find out whether they functioned in the way that was intended. From that, it will move to focus more on the development of 'punishment in the community' in the forthcoming decade or so and how this affects present and future use of community penalties.

In the midst of all community sentences, it should be ensured that the probation contribution to the penal heritage is properly remembered. A reasonable case, according to Nellis (2001), can be made for claiming probation as the first community penalty although it had distant roots in the much older court practice of "binding over". The writer reported that, although first made statutory in 1907, national cover was not achieved until the early 1930s, and the original three-year probation order was not a sentence, but an alternative to a sentence, and therefore, an alternative to punishment, to which the offender had to consent. Now, the probation order became dependent on a conviction; a statutory minimum period of one year was introduced; and a requirement for psychiatric treatment became available, to complement the existing hostel requirement (Nellis, 2001).

Probation had many supporters in the magistracy, but early in the 1950s some influential magistrates began a campaign for a suspended custodial sentence because they felt the probation order itself was insufficiently deterrent and, more generally, they wished to consolidate and refine the range of the courts' sentencing powers (Hall Williams, 1970). After much criticism from Home Office advisers, who did not accept the arguments for toughening probation, suspended sentences were finally introduced in the Criminal Justice Act 1967, seventeen years after they were first proposed (Nellis, 2001). The normal effect of imposing a suspended sentence, as Brownlee (1998) put it, was that the offender left the court free to resume their normal life, subject only to the threat that if they were convicted of a subsequent offence committed during the operational period of suspension, the original prison sentence would then be implemented, usually in full, and normally in addition to any punishment for the later offence. Suspended sentences were not explicitly linked to probation, although suspended sentence supervision orders were created only a few years later by the Criminal Justice Act 1972- but then of little used (Nellis, 2001).

When first introduced, suspended sentence was intended to be used only in place of imprisonment and not instead of pre-existing non-custodial measures such as probation or

finer (Bottoms, 1987). A statutory effect was given to this intention in 1972 by the addition of a stipulation that a suspended sentence could not be passed unless the case appears to the court to be one in which a sentence of imprisonment would have been appropriate (Bottoms, 1987). However, most observers concluded that suspended sentences were applied in cases other than those where the offences concerned were serious enough to warrant imprisonment (Bottoms, 1987). As a result, rather than affecting a reduction in the overall prison population, the introduction of the suspended sentence may have actually added to it indirectly, because some people who would not otherwise have been imprisoned received suspended sentences which were later activated by reason of subsequent offending. The outcome in such cases, as Brownlee (1998) argues, was almost inevitably a longer period of imprisonment than would have been merited by the second conviction alone and, thus, an overall increase in the prison population. It is Brownlee also who drew attention to the doubts which have emerged recently that sentencers, especially magistrates, tended to increase the period of imprisonment awarded when suspending it, and so any subsequent activation resulted, once more, in longer sentences being served than might have been justified by the seriousness of the original offence. As such, the suspended sentence appeared to have done little or nothing in its first twenty years to reduce the prison population (Bottomley and Pease, 1986; Bottoms, 1987).

The Wootton Report on *Non-custodial and Semi-custodial Penalties* in 1970, as Nellis (2001) argues, is justly remembered for introducing the Community Service Order (CSO), the most important new alternative to custody since the inception of probation itself. In recommending the community service order, the Wootton Report expressed the hope that an obligation to perform community service would be felt by the courts to constitute an adequate alternative to a short custodial sentence, although it did not want to preclude its use in other cases where it might be thought more appropriate than existing non-custodial sanctions (Home Office, 1978). Surprisingly, perhaps, this intention was not given express statutory force, and as a result practice varied from court to court, with some courts attempting to keep community service strictly as an alternative to custody and others using it as a separate disposal in its own right (Young, 1979).

As a result, Brownlee (1998) argues, the position of this measure in the tariff of sentences was imprecise, and this represents a significant diversionary effect in the short term.

He explained that:

Up to about 50 per cent of those who received CSOs might otherwise have been imprisoned, but the extent to which this lowered the overall prison population was undoubtedly reduced by an increase in the length of sentence imposed when offenders were reconvicted after having received a CSO (Brownlee, 1998:11).

There is considerable room for doubt, therefore, as to the extent to which the CSO actually did replace custodial sentencing overall, and nothing in the sentencing statistics suggests that the introduction of this particular measure had any impact on the proportion of sentenced adult offenders receiving immediate custodial sentences (Bottoms, 1987).

Thus the community service order, like the suspended sentence, has not fulfilled the high hopes held of it as an alternative to custody; and, while its reconviction record is not as poor as that of the suspended sentence, it is not particularly encouraging either (Pease et al., 1977).

THE CRIMINAL JUSTICE ACT 1991

Although the 1980s saw a number of attempts at strengthening community penalties and making them more effective, perhaps the Criminal Justice Act 1991 was the turning point

in the history of community penalties in England and Wales. The Act came into force in October 1992 with the aim to provide a new coherent sentencing framework based on the principle of 'just desert' with only the most serious of offences being punished with imprisonment (Worrall, 1997). The background to the Act was a growing concern with overcrowding in prisons and a related belief that non-custodial sentences were viewed by sentencers as being soft options (Worrall, 1997). One of the principles on which the Act was based is that, as Sanders and Senior (1994) point out, community sentences stand in their own right and should not be seen as alternatives to custody. This principle, as Worrall (1997) makes it clear, refuted the popular mis-belief of the 1980s that most offenders deserved to go to prison and that if they were given a non-custodial sentence, they were being let off with a soft alternative.

Although the Act appeared to be successful initially in achieving its objectives, this positive trend was short-lived (Worrall, 1997). Having fallen at first in both Crown Court and Magistrates' Courts, the proportionate use of custody began to rise from early 1993 (Brownlee, 1998). Worrall suggests that the failure of the 1991 Act was not due to its inability to achieve its objective of decentring the prison, but to its inability to establish the punitive city outside the prison (Worrall, 1997: 39).

Because it was seen by the government of the day that the scales of justice had been tilted too far in favour of the offenders while victims had had a raw deal, further tightening of the custodial screw came in the Criminal Justice and Public Order Act 1994 in the form of a new sort of custody for 12-14 year-olds and a watering down of the requirements in the 1991 Act that courts obtained and considered probation officers' pre-sentence reports before imposing custody or certain kinds of community sentence (Wasik and Taylor, 1995).

Brownlee (1998) argues that the direct practical consequences of this renewed punitiveness in political rhetoric were marked by an immediate increase both in the number of people being sentenced to custody sentences and in the proportionate use of custodial sentences. In addition, an international victimization survey in 1996 showed that people in England and Wales were more likely to have been the victim of a crime and more fearful of becoming a victim than in almost any other industrialized country, including the US (The Guardian, 26 May 1997, cited in Brownlee, 1998). So it appears that the populist punitiveness of the period following 1993 produced the worst possible outcome, namely a vastly expanded custodial population up to the limits of the capacity of penal institutions to accommodate, accompanied by persistently high levels of criminal victimization and fear of crime (Brownlee, 1998).

In March 1995 the government produced a consultation document entitled *Strengthening Punishment in the Community* (Home Office, 1996). Its main proposal, according to Worrall (1997), was to replace existing non-custodial sentences with a single 'community sentence', the exact content of which would be decided by sentencers to suit the perceived needs and requirements of each individual case. Worrall points out that the clearly-stated purpose of the proposal was to increase public confidence in non-custodial penalties; the less clearly stated aim was to bring the probation service once and for all under the control of the courts by making the purchaser-provider relationship quite explicit. But consultations on the proposal failed to produce unequivocal support among sentencers for the single integrated order, and as a result the government decided to pursue the principles outlined in the 1988 Green Paper within the current law (Brownlee, 1998).

Another strategy for Michael Howard's war of attrition against the perceived leniency of community sentencers was the 1996 White Paper *Protecting the Public* (Home Office, 1996). Unlike the 1990 White Paper, the 1996 Paper proclaimed again that the government firmly

believes that 'prison works' (Worrall, 1997). However, this Paper came under blistering attacks from numerous sources (see Worrall, 1997; Brownlee, 1998). A third of Howard's contributions to the further development of community penalties was to rekindle the use of the electronically-monitored curfew (Nellis, 2001). Finally, in the Crime (Sentences) Act 1997, he introduced, for the first time, the use of community penalties as an alternative to prison for fine default (Nellis, 2001).

Since the Conservative government ceded victory to New Labour in 1997, all the previous policies on community penalties have been replaced, as Nellis (2001) suggests, by a new penal context in which, among other things, new technology, risk management, attention to the voice of victims, and populist punitiveness all play their part. It is probably still too early for the features of this new penal context to be fully understood, but it is surely clear that, in this shift of policies, there are major implications for the development and delivery of community penalties (Bottoms et al., 2001).

To sum up, the creation of new sanctions and the expansion of community penalties since the 1970s have taken place amid hopes that they would reduce the role of prisons and engineer a more effective approach to containing offenders in the community. However, as has previously been stated, those hopes are sharply contradicted by the claims and facts marshaled by critics that the creation of such penalties does not automatically or necessarily lead to a decrease in the use of imprisonment.

Despite the diversity of perspectives adopted and emphases placed on issues under consideration, the criticisms relate to one theme: the dispersal of discipline thesis (Rodger, 1988). This theme, in its broader conception, suggests that community penalties are not substitutes for imprisonment. They fail to divert offenders from imprisonment and, on the contrary, they appear to expand the means or forms of punishment (Vass, 1996). This view that community penalties are another convenient means of extending the process of control, enlarging itself, becoming more intrusive and capturing more and varied groups of people in its meshes, is well captured by Cohen (1985), who likens community penalties, and what he calls attempts to destructure prison establishments, to a Trojan horse. Community penalties are thus a monster in disguise (Vass, 1990).

Having said that, one cannot deny that some community penalties works for some type of offenders under certain conditions may actually be successful in keeping some offenders out of prison. Community penalties, as Vass (1996) indicated, appear to fail because they are usually targeted by courts at the wrong offenders, those who may not be at risk of imprisonment anyway. In this sense, Raynor (1996) suggests that the principal prerequisites of success seem to be that programmes are accurately targeted at those most likely to benefit from them, are delivered in a consistent matter by appropriately trained and committed staff, and are subject to monitoring and evaluation to maintain what may be called programme integrity and ensure that intended outcomes are met.

The coherent development of community penalties into the future, as Bottoms et al. (2001) emphasize, must take account of the following six imperatives:

- awareness of the broader political context;
- awareness that re-offending can be reduced by more than one social mechanism;
- responsiveness to new search findings;
- the constructive pursuit of public safety;
- accommodation of properly informed assessments of offenders in decision-making procedures, including assessments by those who know them best; and

- an understanding of offenders as citizens who live in particular social environments, often of a disadvantaged character.

In sum, there is much more to be learned about the use of community penalties. However, as Vass (1990) argued, even though improvements in the administration and enforcement of community penalties can be achieved, they alone cannot be expected to resolve the prison crisis, which is a policy crisis.

CONCLUSION

In England and Wales, the creation and later on expansion of the community penalties were targeted not only towards containing offenders in the community but also aimed at reducing the prison population. Critics argued that community penalties are another convenient way of the process of control where offenders are kept in the community rather than sending them to prison. However, on the other hand, community penalties have really benefited certain offenders by keeping them away from the bad effects of the prisons. One of the important pre-requisite in the community measures is the selection of appropriate programme on the basis of needs and risk assessment, which could benefit offenders. On this way, one could achieve rehabilitation of offenders on the one hand and public protection and reduction in prison population on the other hand.

REFERENCES

- Bochel, D. (1976). *Probation and After Care: Its Development in England and Wales*. Edinburgh: Scottish Academic Press.
- Bottomley, A.K. and Pease, K. (1986). *Crime and Punishment: Interpreting the Data*, Buckingham: Open University Press.
- Bottoms, A., Gelstrophe, L. and Rex, S. (eds.) (2001). *Community Penalties: Change and Challenges*, Cullompton: Willan.
- Bottoms, A.E. (1987). "Limiting Prison Use: Experience in England and Wales", *The Howard Journal of Criminal Justice*, 26:3, pp. 177-202.
- Brake, M. and Hale, C. (1992). *Public Order and Private Lives: The Politics of Law and Order*, London: Routledge.
- Brownlee, I. (1998). *Community Punishment: A Critical Introduction*, London: Longman.
- Cohen, S. (1985). *Visions of Social Control: Crime, Punishment and Classification*, Cambridge: Polity Press.
- Davies, M. Croall H. and Tyrer J. (2005). *Criminal Justice: An Introduction to the Criminal Justice System in England and Wales*. (3rd ed.). Harlow: Longman.
- Hall Williams, J.E. (1970). *The English Penal System in Transition*, London: Butterworths.
- Home Office (1978). *The Sentence of the Court: A Handbook for Courts on the Treatment of Offenders* (3rd edition), London: HMSO.
- Home Office (1995). *Strengthening Punishment in the Community*, London: HMSO.
- Home Office (1996). *Annual Report for the Home Office and the Charity Commissioners*, Cm 3208, London: HMSO.
- Home Office (1996). *Probation Statistics for England and Wales 1994*, London: HMSO.
- Home Office, Department of Health and Welsh Office (1992). *National Standards for the Supervision of Offenders in the Community*, London: Home Office Probation Service Division.
- Home Office, Department of Health and Welsh Office (1995). *National Standards for the Supervision of Offenders in the Community*, London: Home Office Probation Service Division.
- King, J.F.S (1964). *The Probation Service*, (2nded.) London: Butterworth.
- Mair, G. (1997). "Community Penalties and Probation", In M. Maguire, R. Morgan and R. Reiner (eds.) *The Oxford Handbook of Criminology* (2nd edition), Oxford: Clarendon Press, pp. 123-45.

- Nellis, M. (2001) "Community Penalties in Historical Perspective", In A. Bottoms, L. Gelstrophe and S. Rex (eds.) *Community Penalties: Change and Challenges*, Cullompton: Willan, pp. 16-40.
- Pease, K., Billingham, S. and Earnshaw, I. (1977) *Community Service Assessed in 1976*, Home Office Research Study No. 39, London: HMSO.
- Raynor, P. (1996) "Evaluating Probation: The Rehabilitation of Effectiveness", In T. May and A. Vass (eds.) *Working with Offenders: Issues, Contexts and Outcomes*, London: Sage, pp. 242-58.
- Rodger, J.J. (1988) "Social Work as Social Control Re-examined: Beyond the Dispersal of Discipline Thesis", *Sociology*, 22, pp. 563-81.
- Sanders, A. and Senior, P. (eds.) (1994) *Jarvis' Probation Service Manual* (5th edition), Sheffield, PAVIC Publications.
- Vass, A. (1990) *Alternatives to Prison: Punishment, Custody and the Community*, London: Sage.
- Vass, A. (1996) "Community Penalties: The Politics of Punishment", In T. May and A. Vass (eds.) *Working with Offenders: Issues, Contexts and Outcomes*, London: Sage, pp. 157-184.
- Wasik, M. and Taylor, R. (1995) *Guide to the Criminal Justice and Public Order Act 1994*, London: Blackstone Press.
- Willis, A. (1986) "Alternative to Imprisonment: An Elusive Paradise?", In J. Pointing (ed.) *Alternatives to Custody*, Oxford: Blackwell, pp. 18-38.
- Worrall, A. (1997) *Punishment in the Community: the Future of Criminal Justice*, London: Longman.
- Young, W. (1979) *Community Service Orders: The Development and Use of A New Penal Measure*, London: Heinemann.

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